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September 15, 2010

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Docket No. AB-254 (Sub-No.10), Providence and Worcester Railroad
Company-Adverse Abandonment – Track of Housatonic Railroad Company in
Fairfield and New Haven Counties, Connecticut

Dear Ms. Brown:

We have just learned that on September 10, 2010, Providence & Worcester Railroad ("P&W") filed certain documents indicating that P&W intended to file an adverse abandonment against Housatonic Railroad Company, Inc. ("Housatonic"). The documents consisted of a letter requesting that the Board waive or substantially reduce its filing fees in connection with the proceeding ("Fee Waiver") and a filing entitled "Petition for Waiver of Providence and Worcester Railroad Company" requesting that the Board waive certain of its regulatory requirements ("Petition"). Neither document has been received by Housatonic from P&W but the documents were obtained from the STB web site.

As more particularly set forth herein, Housatonic requests that the P&W request for a waiver or reduction of filing fees be denied.

Fee Waiver – 49 C.F.R. 1002.2(e) (2) permits fee waivers or reductions for non-governmental entities only in extraordinary situations after a showing that the waiver is in the best interest of the public or would impose an undue hardship upon the requestor. P&W states that it "believes" that a waiver is in the best interest of the public but no showing of such public interest is made.

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P&W is a Class II railroad and is proposing to purchase over 12 miles of railroad. In addition, the rail line will require an investment of over \$2 million to enable P&W to resume safe operation of its train. Any claim of undue hardship to pay the filing fee lacks credibility. Furthermore, P&W's assertion that the use of Board resources will not be significant is without merit. If the adverse abandonment proceeding is filed, Housatonic Railroad will vigorously defend all phases of the action on both legal and factual grounds.

Petition – The Petition requests that the Board waive certain of its regulatory requirements in connection with the proposed exempt abandonment. If the fee waiver is not granted, the Petition will be required to be refiled with the fee and Housatonic will have 20 days to reply in accordance with the regulations. In the event that the fee waiver is granted, Housatonic requests a period of 20 days after the decision granting the fee waiver in which to respond to the petition.

Appropriateness of Remedy – The attempt to use abandonment provisions to compel the transfer of an active rail line from a Class III carrier to a Class II carrier is unprecedented and inappropriate under any circumstances. There is no evidence that, in enacting the abandonment provisions, Congress intended such a use. In fact, the enactment of the feeder line provisions and the exclusion of Class I and Class II carriers from those provisions is evidence of a contrary intention.

If the use of the abandonment provisions are ever appropriate to compel the transfer of an active rail line from a Class III carrier to a Class II carrier, they are not appropriate in a case such as this in which (1) the Class II carrier has only overhead trackage rights on the portion of the line that is out of service, (2) the Class II carrier has trackage rights over another line which permits it to serve its customer, over which it is presently serving its customer, which avoids the out of service section, and which is not significantly longer or more circuitous¹, (3) there is no local traffic on the out of service section and no traffic to any customer has been interrupted by the out of service section, and (4) the owner of the line has no intention of abandoning the line.

Cynthia T. Brown

¹ The P&W customer referred to in the petition is situated on Housatonic's line in Danbury, Connecticut. The traffic consists of aggregates and operates seasonally, generally until sometime in November. P&W originates traffic to the Danbury customer near New Haven, Connecticut and there are two routes which can be used to access the customer. Both routes involve use of trackage rights over Connecticut DOT lines from New Haven to the Housatonic owned Maybrook line. P&W has existing trackage rights over both routes and has local freight service on the route that it is currently using to avoid the out of service section. See, Interstate Commerce Commission, Connecticut Rail Systems, Inc., Acquisition and Operation Exemption, FD 32233, 58 FR 17625.

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Status of the Line - P&W's assertion that Housatonic has refused to place the out of service portion of its line into service is not correct. Housatonic is preparing to put approximately 8 miles back in service imminently. Housatonic is in the process of attempting to secure state assistance for a portion of the cost of restoring the remaining approximately 4.7 miles of the line to service and hopes to be able to do so within a reasonable period of time.²

Status of Trackage Rights Agreement - Prior to making these filings with the Board, P&W was notified by Housatonic that P&W was in material breach of the terms of its Trackage Rights Agreement and delinquent in payment of its 2009 trackage rights fees thereunder.³ P&W has refused to pay the amounts that Housatonic claims to be due. The failure of P&W to pay the amounts due has hampered Housatonic's efforts to perform necessary improvements to the line.

Alternative P&W Remedies - Apart from the fact that P&W has trackage rights over an alternative route, P&W has an alternative remedy under the Trackage Rights Agreement. The Trackage Rights Agreement permits P&W to fund the necessary work to restore the track to service and to deduct the cost of that work from future trackage rights fees. Not only has P&W indicated that it would not exercise that right, it has indicated to the State of Connecticut that it was unwilling to share any portion of the restoration work with the state, Housatonic Railroad and the customer.

Housatonic Railroad Company, Inc.

By 
Edward J. Rodriguez, Its General Counsel

cc: Edward D. Greenberg, Esq., OKG Law, P.C., 1054 Thirty-First Street, NW,
Washington, DC 20007-4492

² Currently, there is a several month backlog in receiving necessary materials from normal vendor channels. The P&W train operates on a seasonal basis and, in recent years, has ceased operation in November.

³ P&W claims a right to offset the trackage rights fees with other costs, which Housatonic believes is incorrect.